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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,642	05/22/2001	John Andrew Aiken JR.	RSW92001032US1	8726

25259 7590 12/09/2009

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EXAMINER	
CHANG, JUNGWON	
ART UNIT	PAPER NUMBER
2454	

NOTIFICATION DATE	DELIVERY MODE
12/09/2009	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN ANDREW AIKEN JR, WESLEY MCMILLAN DEVINE,
and DAVID ANTHONY HERR

Appeal 2008-005152
Application 09/862,642
Technology Center 2400

Decided: December 7, 2009

Before ALLEN R. MACDONALD, *Vice Chief Administrative Patent Judge*, and LEE E. BARRETT and STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-27. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The disclosed invention relates generally to network communications in a cluster of data processing systems (Spec. 1).

Independent claim 1 is illustrative:

> 1. A method of establishing a connection originated by an application executing on a data processing system in a cluster of data processing systems, the method comprising the following carried out by the data processing system executing the application:
>
> associating a dynamic network address with the application at the data processing system on which the application is executing;
>
> determining at the data processing system executing the application if a received request for the data processing system to originate a connection is associated with the application; and
>
> establishing the connection from the data processing system executing the application utilizing the associated dynamic network address as a source address for the connection if the request is associated with the application.

The References

The Examiner relies upon the following references as evidence in support of the rejections:

Locklear	US 6,252,878 B1	Jun. 26, 2001 (filed Oct. 30, 1997)

Alteon WebSystems, Inc., *The Next Step In Server Load Balancing*, (Nov. 1999) ("Alteon").

Applicants' Admitted Prior Art at pages 2 and 3 of the Specification.

The Rejections

1. The Examiner rejects claims 1-4, 24, and 26 under 35 U.S.C. § 102(b) as being anticipated by Alteon.
2. The Examiner rejects claims 5-13, 15-22, 25, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Alteon and Locklear.
3. The Examiner rejects claims 14 and 23 under 35 U.S.C. § 103(a) as being unpatentable over Alteon, Locklear, and Admitted Prior Art.
4. The Examiner rejects claims 1-4, 24, and 26 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement.

ISSUE 1

Regarding the Examiner's rejection of claims 1-4, 24, and 26 under 35 U.S.C. § 112, first paragraph, Appellants assert that the "rejections . . . should be reversed" (Reply Br. 3).

Did Appellants demonstrate that the Examiner erred in finding that claims 1-4, 24, and 26 fail to comply with the written description requirement?

ISSUE 2

Appellants assert that Alteon fails to disclose "associating a dynamic network address with the application at the data processing system on which the application is executing" (App. Br. 9).

Did Appellants demonstrate that the Examiner erred in finding that Alteon discloses associating a dynamic network address with an application at the data processing system on which the application is executing?

FINDINGS OF FACT

The following Findings of Facts (FF) are shown by a preponderance of the evidence.

1. Alteon discloses that "Web Switches dynamically distribute load across a group of servers running a common application" (pg. 1).
2. Alteon discloses that "clients access the service using a virtual IP (VIP) address that resides in a Web Switch that front-ends the real servers" (*id.*).
3. Alteon disclose that "[a]s connection requests arrive for the virtual service, the Web Switch passes these requests on to one of the real servers in the VSG based upon knowledge of the servers' availability, load handling capability, and present load" (*id.*).
4. Alteon discloses "[a]fter the Web Switch binds a connection request to a real server, it performs address substitution so that the real server will transparently receive packets for that session" (pg. 5).

5. Alteon discloses a "Virtual Server Group (VSG)" (pg. 1) "hosting the application" (pg. 5).

PRINCIPLES OF LAW

35 U.S.C. § 112, first paragraph

Written Description

Under the written description requirement of 35 U.S.C. § 112, the disclosure of the application relied upon must reasonably convey to the artisan that, as of the filing date of the application, the inventor had possession of the later claimed subject matter. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991). "One shows that one is 'in possession' of *the invention* by describing *the invention,* with all its claimed limitations, not that which makes it obvious." *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997).

Although "the meaning of terms, phrases, or diagrams in a disclosure is to be explained or interpreted from the vantage point of one skilled in the art, all the limitations must appear in the specification." *Id.* The specification need not describe the claimed subject matter in exactly the same terms as used in the claims, but it must contain an equivalent description of the claimed subject matter. *Id.*

35 U.S.C. § 102

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a

claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted). "Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (citation omitted). "In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art." *Id.* (citation omitted).

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

"The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

ANALYSIS

Issue 1

The Examiner finds that claims 1, 24, and 26 recite "determining at the data processing system executing the application if a received request for

the data processing system to originate a connection is associated with the application" (Ans. 3) but that the limitation "contains subject matter which was not described in the specification" (*id.*). However, the Specification discloses that "[i]f a request is received for the data processing system to originate a connection that is associated with the application, the connection is established utilizing the dynamic network address" (Spec. 7-8). We find that the Specification discloses materially the same features as the disputed claim feature and therefore would have conveyed to one skilled in the art that Appellants had possession of the claimed invention.

Accordingly, we conclude that Appellants have met their burden of showing that the Examiner erred in rejecting independent claims 1, 24, and 26, and claims 2-4, which depend from claim 1 with respect to issue 1.

Issue 2

The Examiner finds that Alteon discloses "'the Web Switch, with server load balancing, acts as a virtual front-end processor' . . . [that] is equivalent to the claimed the data processing system" (Ans. 16-17). However, while Alteon discloses that "the Web Switch binds a connection request to a real server . . . [and] performs address substitution" (pg. 5), thereby associating a network address with a server, we do not find, and the Examiner has not demonstrated, that Alteon discloses or suggests that the web switch associates an address with an application and also executes the application (i.e., associating a dynamic network address with the application at the data processing system on which the application is executing). Indeed

Alteon discloses that a virtual server group (i.e., a server) hosts the application (FF 5) rather than the web switch hosting (or executing) the application. Thus, the Examiner has not demonstrated that the "web switch" of Alteon is equivalent or suggestive of the claimed data processing system that both executes the application and associates a network address with the application.

Independent claims 1, 5, 15, and 24-27 recite similar features. The Examiner has not demonstrated that Locklear and/or Admitted Prior Art make up for the deficits of Alteon.

Accordingly, we conclude that Appellants have met their burden of showing that the Examiner erred in rejecting independent claims 1, 5, 15, and 24-27, and claims 2-4, 6-14, and 16-23, which depend therefrom.

CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have demonstrated that the Examiner erred in finding that claims 1-4, 24, and 26 fail to comply with the written description requirement and that Alteon discloses associating a dynamic network address with an application at the data processing system on which the application is executing.

DECISION

We reverse the Examiner's decision rejecting claims 1-4, 24, and 25 under 35 U.S.C. § 102(b) and 112, first paragraph, and claims 5-23, 25, and 27 under 35 U.S.C. § 103.

REVERSED

msc

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